

## MEMBERSHIP AGREEMENT

Agreement made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between JULIE, INC., an Illinois not-for-profit corporation with its principal office at 3275 Executive Drive, Joliet, IL 60431 (hereinafter the "corporation") and \_\_\_\_\_, a \_\_\_\_\_ corporation with its principal office at \_\_\_\_\_ (hereinafter called the "member").

WHEREAS, the corporation has been formed as an Illinois General Not-for-Profit Corporation to establish facilities to receive and transmit information to and from persons, firms, corporations and other entities intending to undertake activities which might interfere with or damage the facilities of members of the corporation or others and such activities to include but not be limited to excavating, drilling, blasting or otherwise disturbing the subsurface of the earth and to forward information to the members of the corporation who have facilities which might be affected by the proposed activities; and

WHEREAS, the member has such facilities and therefore wishes to become a member of the corporation:

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties agree as follows:

### ARTICLE I

1.1 The member accepts and agrees to be bound by the terms and conditions of the Articles of Incorporation, the By-Laws and the Operating Rules and Regulations of the corporation, as the same shall be in effect from time to time.

### ARTICLE II

2.1 Each member shall be individually and solely responsible for taking such

action as it, in its sole discretion, may deem necessary to protect its respective underground or other facilities and to prevent interruption of its respective service to the public.

2.2 Nothing in this Agreement shall prevent any member from seeking recovery against the party (including any other member of the corporation) who caused or was responsible for the loss or damage to the member's underground or other facilities or for any other claim or injury except that the member hereby waives any right to recover against the corporation, its directors, officers and employees. It is also expressly understood that neither this Agreement nor the By-Laws is intended to, nor shall either be construed as, altering or affecting the rights and obligations of, or creating additional liability for, any member in its capacity as a supplier of utility service, whether to the corporation or any other member, or in its capacity as a licensor, licensee, franchisor or franchisee of any other member.

2.3 The directors, officers and employees of the corporation shall be indemnified by the corporation as provided for in Article XV of the By-Laws and shall not be personally liable to any member for any loss or damage incurred by any member as a result of any action or failure to act, except as a result of any action or failure to act which would preclude indemnification under said Article XV on the part of the corporation.

2.4 Each member shall be individually and solely responsible for locating and marking its own underground facilities pursuant to telecommunication notification by the corporation. Further, to the fullest extent permitted by law, each member shall indemnify the corporation and hold harmless the corporation from and against any and all damages, fines, civil penalties, lawsuits, claims, demands, liabilities, losses, costs and expenses,

including attorneys' fees and administrative expenses, that may arise, or be alleged to have arisen, out of or in connection with such member's performance of, or failure to perform, any work, obligation or service undertaken by, or imposed herein upon, such member, or any part thereof, whether or not due or claimed to be due in whole or in part to the active, passive or concurrent negligence or fault of such member, including without limitation damages, fines, civil penalties, claims, demands, liabilities, losses, costs and expenses for or on account of bodily injury, sickness, disease or death sustained by any person or persons or injury or damage to, or loss or destruction of, any property, or any act or omission of such member, its officers, agents or employees.

2.4.1 Where more than one member is obligated to indemnify and hold harmless the corporation pursuant to Section 2.4 above in connection with an occurrence for which indemnification and hold harmless protection is sought, such members shall provide indemnification and hold harmless protection to the corporation in the ratios set forth in Section 2.5 below.

2.4.2 Where more than one member is obligated to indemnify and hold harmless the corporation pursuant to Section 2.4 above in connection with an occurrence for which indemnification and hold harmless protection is sought and any such member fails to fulfill its obligation under Section 2.4.1, then the other members obligated to indemnify and hold harmless the corporation pursuant to Section 2.4 above shall be responsible for such obligation in the ratios set forth in Section 2.6 below, provided, such other obligated members shall have the right to pursue at law, equity and otherwise all available remedies (including but not limited to, by way of subrogation, the corporation's right to indemnification under Section 2.4 above) to enforce the obligation of the failing member

to the extent that said other obligated members have paid amounts in excess of their obligations under Section 2.4.1.

2.5. This Membership Agreement specifically recognizes and affirms that all municipal members' liability for indemnification of the directors, officers or employees of the corporation or for indemnification of any other member or officer, agent, or employee of that member is limited to claims arising as a result of the acts or omissions of the municipality or its officers, agents, or employees arising out of the operations of the municipality's underground utility facilities.

2.5.1 Further, no additional liability for a municipal member in relation to any other member with which the municipal member may have entered into a franchise agreement is hereby created by signing and entering into this Membership Agreement.

2.5.2 If any municipal member's liability for indemnification under a franchise agreement is narrower than the indemnification provisions as provided by this Membership Agreement, then the terms of the franchise agreement shall control.

2.5.3 Notwithstanding anything to the contrary contained within this Membership Agreement, the By-Laws and the Operating Rules and Regulations of JULIE, Inc., the Illinois State Statute found at 220 ILCS 50/11.5 shall be applicable and shall control the rights of JULIE, Inc. and any municipal member.

2.6 The votes of each member (determined in accordance with ARTICLE III. Members, SECTION 3. Voting Rights, of the By-Laws, and made a part of this Agreement) as of the time of the incident which is the subject matter of a claim shall be used to determine the ratios set forth in this section.

The ratio for each member shall be a fraction the numerator of which is his vote as

determined in the prior paragraph and the denominator of which is the sum of the votes of all members who are providing indemnification and hold harmless protection to the corporation. (For instance, in the prior paragraph if there are three members providing indemnification and hold harmless protection to the corporation and two are entitled to cast 50,000 votes each and one 25,000 the respective fractions would be:

$$\frac{50,000}{125,000} \quad \frac{50,000}{125,000} \quad \text{and} \quad \frac{25,000}{125,000}, \quad \text{or} \quad \frac{2}{5}, \quad \frac{2}{5}, \quad \text{and} \quad \frac{1}{5}$$

### **ARTICLE III**

3.1 Each member shall secure and maintain in force during the term of this Agreement Comprehensive General Liability Insurance, including Contractual Liability insurance. Such insurance shall be in such form, in such amounts, and with such companies as are acceptable to the corporation and is in accordance with the standards set forth in the Operating Rules and Regulations of the corporation. A certification evidencing such insurance shall be filed with the corporation before this Membership Agreement shall become effective and shall provide evidence that the policy has been endorsed to provide thirty (30) days' notice of cancellation or change thereof. Said insurance requirements may be waived at the discretion of the corporation.

### **ARTICLE IV**

4.1 This Agreement is made pursuant to and shall be governed by the laws of the State of Illinois applicable to agreements made and to be entirely performed within such State.

4.2 In the event that any provision of this Agreement or the application of such provision to any party or circumstance, shall be held to be invalid or unenforceable, the

remainder of this Agreement, or the application of such provision to parties or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby.

4.3 No waiver at any time by any party hereto of its rights with respect to any other party, or with respect to any other matter arising in connection with this Agreement, shall be considered a waiver with respect to any other default or matter.

4.4 Any amendment to this Agreement shall be in writing and shall be made by a change in the Articles of Incorporation or By-Laws of the corporation.

4.5 Except as otherwise provided, this Agreement shall be effective as of the day and year first above written. Subject to the provisions of Section 4.6, this Agreement may be terminated by any member after the effective date hereof by thirty days written notice to the corporation and each member.

4.6 No termination of this Agreement, shall discharge the member of (1) any obligation it owes any other party indemnified herein by reason of any transaction, loss, cost, damage, expense or liability or, (2) any other obligation under this Agreement including but not limited to the obligation to pay its bills from the corporation, which shall occur or arise (or the circumstances, events or basis of which shall occur or arise) prior to such termination, whether the same be known or unknown at the time of such termination.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

<b><u>JULIE, INC.</u></b>	
ATTEST:	JULIE, INC.
_____	BY: _____
WITNESS	PRESIDENT
JULIE, INC., FEDERAL TAX IDENTIFICATION NO.: 36-2944012	

<b><u>MEMBER</u></b>	
ATTEST:	MEMBER
_____	BY: _____
WITNESS	Its: _____
	(Your Title)
YOUR FEDERAL TAX IDENTIFICATION NO.: _____	